

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b)

Table of Allotments

FM Broadcast Stations

(Fort Bridger, Wyoming and Woodruff, Utah)

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MM Docket No. 00-161

RM-9929

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

M. Kent Frandsen ("Frandsen"), permittee of FM radio broadcast station KNYN, Fort Bridger, Wyoming ("KNYN"), by his attorneys, hereby submits his Reply to the Comments of KGNT Inc. ("KGNT") filed on October 23, 2000. KGNT's Comments oppose the proposal set forth in the Commission's Notice of Proposed Rulemaking ("*NPRM*"), released September 1, 2000, to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to reallocate Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah. As set forth herein, nothing in KGNT's Comments rebuts the showing made by Frandsen that the reallocation is in the public interest, and thus the proposed change in the Table of Allotments should be made.

Discussion

I. Woodruff, Unlike Fort Bridger, Is A "Community" For Allotment Purposes.

Initially, KGNT makes the argument that Frandsen's reallocation proposal is not in the public interest, submitting that Fort Bridger, Wyoming is the preferred community under a Section 307(b) analysis. KGNT's contention simply is not supportable, as, upon even a cursory

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examination, it is clear that Woodruff, Utah is the preferred community. Unlike Fort Bridger, Woodruff qualifies under Commission precedent as a true “community” for allotment purposes. As Frandsen stated in his Petition for Rulemaking and his Comments, the 1990 U.S. Census recognizes Woodruff as a town with a population of 135 people in 66 households. It is located in Rich County, which has a population of 1,725. In addition to being a census-designated place, Woodruff has many elements that define it as a “community,” including a local government made up of a mayor and city counsel, a United States Post Office and zip code, a fire department, several local businesses, and a sizeable Ward congregation of the Church of Jesus Christ of Latter Day Saints which has close to 500 members. Woodruff also is a gathering place for the surrounding population of Rich County on occasions such as the Fourth of July, when it hosts a parade and rodeo, and, recently, when Woodruff participated as a host city for an internationally-known cross country bicycle race, the Race Across America. All of these elements combine to create the “community” of Woodruff, which would greatly benefit from the introduction of a first local service.

In contrast, Fort Bridger has no elements which justify its continuing specification as the city of license for this station. Fort Bridger is not incorporated, and it is not a census designated place.¹ It has no local government or civic activities and little or no commercial activity. KGNT has submitted nothing to refute these findings. Thus, as Fort Bridger has no elements that would define it as a “community” for allotment purposes, it cannot be favored over Woodruff, which has all of those elements.

¹ While KGNT claims that Fort Bridger is larger than Woodruff, as it has a population of 200 persons, it cites no source for that assertion. Given that Fort Bridger is neither incorporated nor a Census Designated Place, any such claim must be based on some

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KGNT bases its arguments on *Van Wert, Ohio and Monroeville, Indiana*, 7 FCC Rcd 6519 (1992), in which a proposal to change a community of license was denied by the Commission because the public interest benefits did not outweigh the loss of service that would result from the removal of an existing, operating transmission service from a community. That case is very different from Frandsen's because it involves the removal of an existing service from a real "community," with all of the attributes of a community. Frandsen's situation, as discussed below, does not involve the removal of an existing service because KNYN is not on the air, nor does it involve the removal of a service from a real community whose needs are being served by the station. Instead, as set out above, Fort Bridger has no attributes of a community which would be served by a station, even if the station was operational. Consequently, the *Van Wert, Ohio* case has no applicability to Frandsen's reallocation proposal.

II. Frandsen's Proposal Does Not Involve a Site Change and Will Not Result in a Loss of Service.

In its Comments, KGNT further asserts that Frandsen intends to change his transmitter site once Channel 256C1 is reallocated to Woodruff, Utah. Thus, based on a hypothetical transmitter site specified in connection with an allotment request filed by the previous permittee of KNYN, which proposed a different city of license, KGNT argues that the Frandsen proposal will result in a loss of service to underserved areas.

This argument cannot be credited. Initially, it must be reiterated that Frandsen has not proposed any change in coordinates for the proposed station. If, or when, Frandsen makes such a proposal, KGNT can object at that time, when there is a specific proposal to which objections

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arbitrary calculation, which should not be relied on by the Commission in its analysis here.

can be directed. But an objection now, based on engineering associated with a different proposal, for a different site and different city of license, simply cannot be supported. Thus, on this ground alone, the KGNT objection must be rejected. *See Oraibi and Leupp, Arizona*, 14 FCC Rcd 13547 (1999) (stating that “[a]ny suggestion that [petitioner] may subsequently relocate its transmitter site . . . amounts to speculation and does not obviate our finding that the reallocation . . . will result in a preferential arrangement of allotments”).

Moreover, even if a site relocation were to take place, there will be no loss in coverage or population since KNYN is not on the air, and there will be no actual loss of service to Fort Bridger or to any hypothetical underserved area.² As Frandsen stated in his Comments, “it is well settled that the removal of an unbuilt station from a community does not represent the same concerns with respect to a loss of service as removal of an operating station would because the public has not yet come to rely on service from the unbuilt station.” Frandsen’s Comments in Support of Proposed Rulemaking at 2; *and see Pawley’s Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993); *Glencoe and Le Sueur, Minnesota*, 7 FCC Rcd 7651 (1992); *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995); *Benavides, Bruni and Rio Grande City, Texas*, 13 FCC Rcd 2093 (1998). Consequently, KGNT’s argument that “loss” areas may result from a possible site change that may or may not occur in the future is irrelevant because there has never been any service to that area.


² As the Commission itself noted, “[s]ince Station KNYN(FM) is not on the air, the reallocation would not result in the removal of an ‘existing service’ at Fort Bridger.” *Notice of Proposed Rulemaking, Fort Bridger, Wyoming and Hyrum, Utah*, 14 FCC Rcd 9543 (1999).

Conclusion

For the foregoing reasons, KGNT's arguments must be rejected. Thus, it is respectfully requested that Frandsen's proposed change to the FM Table of Allotments be adopted.

Respectfully submitted,

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November 7, 2000

CERTIFICATE OF SERVICE

I, Karleen Lamie, a secretary in the law firm of Shaw Pittman, hereby certify that I have, on this 7th day of November, 2000, caused a copy of the foregoing "**Reply Comments**" to be served by first class U.S. mail, postage prepaid, on the following:

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